

**Testimony of Jennifer L. Windsor
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Subcommittee on the Western Hemisphere
House International Relations Committee
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Mr. Chairman, thank you for the opportunity to testify today on the critical issue of transparency and rule of law in Latin America.

I will focus my remarks today on our analysis of how the issues of transparency and rule of law impact the broader issues of freedom and democratic governance within the region. I will also draw on our experience working in the region with a number of human rights defenders as well in sharing some of our recommendations for U.S. action.

As you aware, a core part of Freedom House's mission is to monitor and analyze information about the state of freedom around the world. To this end, we publish on a regular basis a series of reports and surveys on global freedom, including reports that focus on specific aspects of democracy including press freedom, as well as on democratic governance, rule of law and corruption.

Our best known survey, *Freedom in the World*, was first published over thirty years ago. *Freedom in the World* assesses a broad range of indicators and assigns a numerical rating for the level of political rights and the level of civil liberties in each of the world's 192 countries. Freedom House also gives each country a designation of Free, signifying a respect for democratic norms and an adherence to international human rights standards; Partly Free, signifying an adherence to some democratic standards; and Not Free, signifying the systematic suppression of democratic institutions and a massive violation of human rights.

The state of global freedom was bleak when we launched *Freedom in the World* thirty three years ago. Democracy was restricted to Western Europe, North America, and a few other outposts. At that time, Latin America was moving in precisely the wrong direction. Many societies in the region had experienced takeovers of elected governments by juntas, caudillos, or military dictators, and academics noted the rise of a new style of governance in the hemisphere, that of bureaucratic authoritarianism.

Thus, in 1974, only 8 countries in the Latin American and Caribbean region were scored as Free; 11 were scored Partly Free; and 7 as Not Free. In other words, only 30 percent of Latin American countries enjoyed the benefits of a free society: fair elections, a free press, freedom of expression and assembly, minority rights, the rule of law, freedom from torture and

other forms of state repression. Ten years later, in 1984, 19 countries from the region were rated as Free, 11 as Partly Free, and just 3 as Not Free. The region led the so-called “third wave of democracy.”

In our last survey, Latin America still is one of the regions with the highest levels of freedom. Today, 24 countries from the region are rated by Freedom House as Free, with 9 as Partly Free and two—Cuba and Haiti—as Not Free.

This is an impressive record in a region where freedom has had a checkered history. It is all the more impressive because the level of freedom has remained high during a period of economic change and, in some societies, political upheaval.

Unfortunately, we cannot declare victory for democracy in Latin America and go home. Like most other regions, Latin America has lagged behind in the institutionalization of democratic gains, particularly in the key areas of rule of law and transparency. A closer analysis of the *Freedom in the World* data for the year 2004 indicates that there are two categories of indicators where even the Free countries in the region score lower than in other areas: rule of law and the transparent and accountable functioning of government.

Under the category of rule of law, our analysts specifically look at the degree of judicial independence, the predominance of the rule of law in criminal and civil matters, civilian control of the police and security forces, protection from torture and unjust imprisonment, and equal treatment of all people under the law.

Under the functioning of government category, we look at the pervasiveness of official corruption, governmental openness and transparency, and the degree to which government policies are determined by freely elected officials.

In both categories, the region still scores relatively poorly in most countries. There has, of course, been remarkable progress in reducing the incidence of torture, in increasing the professionalization of the judiciary, and the passage of new legislation in many countries. But there are still serious weaknesses in most rule of law systems, particularly in ensuring that the rule of law actually governs the day-to-day realities of life in those countries, as well as applying the law equally to all citizens. In many countries, rising crime has put tremendous pressure on rule by law and on law enforcement, as communities are taking matters into their own hands – to the detriment of respect for fundamental human rights.

In the area of corruption, there has been progress in many countries, with more transparency in financial systems, the establishment of supreme audit authorities, and more media exposure of corrupt officials. But the patronage systems are still alive and well in the region, and they directly impact public confidence in the rule of law system.

Because of the importance of issues of corruption and transparency and rule of law, Freedom House has recently designed a new survey, *Countries at the Crossroads*, that examines in more detail these critical aspects of democratic governance. Since it began last year, Freedom House has applied the new methodology to a select group of sixty countries that have been chosen for their strategic significance and, in some cases, weak democratic institutions. Many of these countries had serious problems with rule of law and corruption.

Ecuador, for example, was characterized as suffering from a high degree of corruption, a problem that was exacerbated by the nepotism and favoritism of the now former president. This is the case despite the fact that the country has put in place a number of laws and institutions specifically designed to prevent corrupt practices and encourage government transparency. The problems of rule of law in Ecuador are unfortunately too well known, as then President Guiterrez recently replaced 27 out of the 31 Supreme Court Justices, after a narrowly unsuccessful impeachment attempt. The subsequent removal of Guiterrez -- by questionable methods in terms of Constitutional legitimacy -- further undermined rule of law in the country. Ecuadorians -- despite the fact that they live in formally democratic systems -- are deciding to take to the streets instead of working through their institutions.

In Bolivia, the report noted that the justice system "characterized by underpaid, poorly trained judges and administrative officials who are susceptible to financial and political pressure." Corruption and politicization are thus embedded in the legal system even though, as in other countries of the regions, laws and policies have been adopted that are designed to professionalize and depoliticize the judiciary.

In Peru, we found that the judiciary enjoys the least amount of public confidence among all governmental institutions, even though the Toledo government has attempted to correct some of the damage done during the Fujimori years. "The judiciary is corrupt, inefficient, and subject to political and economic influence," the report concludes, a refrain that is depressingly familiar throughout our assessments of a number of Latin American countries. We found conditions in which judges were overworked and underpaid, independent minded prosecutors who were subject to dismissal, and a judicial system that is rife with class based favoritism and which gives unequal treatment to the country's large

indigenous population. The prosecution of corruption is hindered by the absence of anticorruption mechanisms untainted by the Fujimori era judiciary. Other problems include a lack of official anticorruption statutes, the light sentences meted out to those convicted of corruption—usually house arrest or restrictions on foreign travel—and the slow pace of judicial procedures.

Another critical case is that of Venezuela, which is particularly unsettling for those who are ready to declare democracy safely installed in the region. During the 1970s Venezuela was consistently given a rating of Free, and was regarded by Freedom House as one of the region's most stable democracies. During the 1990s, our analysts began to identify gaps in the country's democratic performance, a trend that accelerated after the election of President Hugo Chavez. Venezuela is today rated as a Partly Free society in *Freedom in the World*, but its rating for media freedom has been lowered to Not Free in our annual press freedom index.

The situation of the increasingly politicized justice sector in Venezuela is particularly disturbing. Almost 85% of judges are provisional. Such a high percentage of provisional judges has a serious detrimental impact on citizens' right to proper justice and on the judges' right to stability in their positions as a guarantee of judicial independence and autonomy. There have been a number of instances where this provisional status has led to judges being removed from office for making decisions with which the executive branch did not agree. In addition, recent reforms have increased the number of Supreme Court Justices and made it easier for the government of Chavez to pack the court with supporters. Overall weakness in the judicial sector has contributed to increased impunity within the country. Recent information shows that 90% of all investigations into human rights violations did not make it past the preliminary stages of the process. Human rights defenders are under political attack from the government and non-state actors who are sympathetic to the government.

Many of these observations are relevant to other countries in the region. In almost every case, these societies are marked by the adoption of laws, regulations, and policies that are meant to strengthen the rule of law and reduce corruption. And in almost all cases, the implementation of these measures is weak or flawed. All too often, we find a judiciary whose officials are poorly compensated and lack professionalism, despite years of training from the US government and others. And human rights violations are continuing, including from non-state actors that are fed up with rising crime.

Likewise, most Latin American countries share in common endemic problems of police corruption, fueled by low pay, a lack of training, and, often, an environment of impunity. An area crying out for greater attention

is the lack of effective efforts to reform Latin American law enforcement institutions charged with preventing and controlling crime and maintaining the order necessary for the well-being of citizens and the protection of private property. Community policing programs such as the USAID program in El Salvador need to be replicated elsewhere in the region.

In addition, in those countries with a substantial indigenous population, a further problem is a judicial system that functions poorly and deprives indigenous people of anything approaching full access to justice. As those populations have become more politically aware and active, they have been disappointed by the failure of existing legal institutions to address long-standing grievances concerning issues such as land rights and natural resources. This has fueled extrajudicial actions by those groups, which often have had a destabilizing impact on the overall political system and respect for human rights and due process within those societies.

The findings of Freedom House surveys are reflected in other assessments as well, including the latest findings from the latest UNDP survey on democracy in Latin America. When asked whether governments actually complied with existing legislation, only three countries (Colombia, Chile, and Uruguay) received an average score higher than 5 (out of a total of 10.) Only 32% of those surveyed had any or a lot of confidence in the judiciary, and 37% in the police force. While a slight improvement from 2003, both of these percentages are lower than in past years. The majority of the respondents felt that people were not being treated equally by the legal system – particularly poor and uneducated people, and that this was part of the reason for their lack of confidence.

In the area of corruption, the survey found that 21% of the population said that they had knowledge of some act of corruption, which was a decrease of 6% in 2002. But in Mexico, Paraguay, Argentina, and Ecuador (all countries that are Free or Partly Free in our survey), over half of the population believes that you can bribe a policeman and a judge.

What these type of attitudes suggest is not only the lack of reform in the key institutions of rule of law or if reform has occurred, the lack of implementation of that reform, but also a popular lack of trust in institutions in the region. Even when there is progress towards reform, citizens do not place greater trust in them. Institutional efforts towards reform need to be coupled with efforts to change popular perceptions and mindsets towards those institutions.

Most of these problems outlined here are not, of course, unique to Latin America. Indeed, our analysis of global trends indicates that a weak rule of law and a failure to stem corruption present key obstacles to the

consolidation of democratic institutions throughout the world, especially in the countries of the former Soviet Union. Elections, we are learning, are the easy part. The hard part, especially for countries that face high levels of poverty, is the challenge of building a legal structure that treats all citizens alike, that rules justly, and whose officials are honest and fair minded.

The United States has played, and can continue to play an important role in assisting the governments of Latin America in the reform of flawed and corrupt legal systems. We would like to end with a few recommendations:

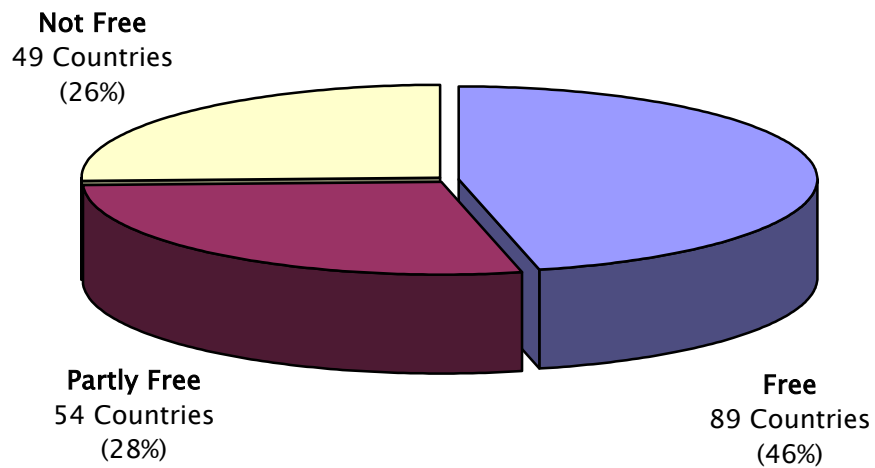
- (1) First, the U.S. must continue to stay engaged in encouraging and supporting continued judicial reform in the region – both through policy dialogue at the bilateral and multilateral level, and by providing sufficient resources. As the Middle East, Iraq and Afghanistan have become important priorities, we are concerned that the Administration has not focused sufficiently on the deterioration of political conditions in Latin America. We are particularly concerned about past reports that USAID was diverting funds that have traditionally supported rule of law reform in Latin America to support their trade agenda, while still categorizing it as democracy assistance. We have heard that the funding for legal programs is increasingly coming from the State INL Bureau budget whose law enforcement mandate does not sufficiently address issues such as unequal access and other critical democracy and human rights aspects of rule of law. We hope that the Administration maintains sufficient levels of long-term development assistance to ensure continuation of these important programs.
- (2) The U.S. should remain focused on human rights – especially as rising crime rates are creating pressures within the region to bypass basic human rights procedures. The U.S. should increase support for the work of indigenous human rights defenders that monitor and report on abuses within societies, as well as the functioning of the justice system, and can provide legal advice and services for citizens in accessing justice and raise public awareness of their rights.
- (3) A critical area which deserves more focus in U.S. transparency efforts is to support and encourage the passage and *implementation* of freedom of information (FOI) legislation. These laws, which would mandate release of government documents to the public, shine light on procurement processes and decisions, particularly in reference to natural resources. As well, they provide a new avenue for human rights organizations to ensure investigations are conducted properly into past and ongoing human rights violations. In Latin America and Caribbean, only 9 countries have FOIA type laws on their books: Belize, Colombia, Dominican Republic, Ecuador, Jamaica, Mexico,

Panama, Peru and Trinidad and Tobago. Since Mexico has passed one of the most liberal FOIA laws and has a host of excellent implementing mechanisms, their expertise should be tapped to share their lessons learned elsewhere in the region.

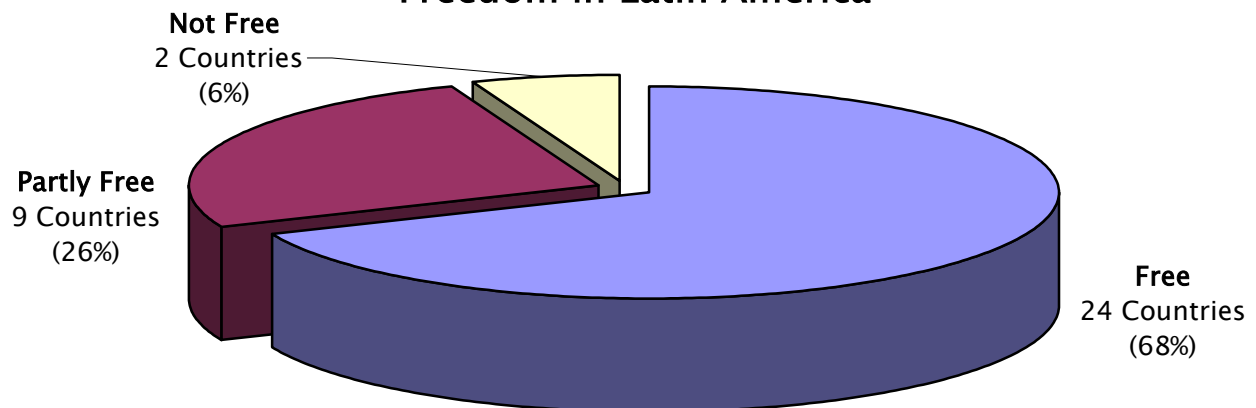
- (4) Similarly, we strongly endorse the need to continue to strengthen press freedom, which plays an important role in encouraging transparency and building support for institutions in the region. The recent trends in Latin America are alarming, according to our last survey of press freedom. In the last two years, Venezuela and Colombia joined the ranks of Cuba and Haiti in having the worst environment for press in the region. We also saw a downturn in press freedom in Argentina, Bolivia, Guatemala, Honduras, Nicaragua, and Peru. Libel laws continue to be a major problem for the hemisphere, and the U.S. has a role to play in raising this in our diplomatic dialogue bilaterally and in appropriate multilateral venues.**

In short, Latin America has clearly come a long way. But it is not time for anyone to be complacent. Those in the region and outside the region have to recommit themselves to the issues of deepening democracy in order not to lose – even if ever so slowly – the gains of the last thirty years. And rule of law and transparency are the critical areas that need the focus of policymakers and activists in and outside of the region.

Freedom in the World 2005



Freedom in Latin America



Freedom in Latin America: Thirty-Year Trend

Year Under Review	1974	1984	1994	2004
FREE	8 (31%)	19 (58%)	18 (55%)	24 (68%)
PARTLY FREE	11 (42%)	11 (33%)	14 (42%)	9 (26%)
NOT FREE	7 (27%)	3 (9%)	1 (3%)	2 (6%)
Total	26	33	33	33